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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,395	10/03/2001	Hideki Nishikawa	1737.26	9664
24040	7590	12/14/2004	EXAMINER	
DENNIS G. LAPOINTE LAPOINTE LAW GROUP, PL 623 E. TARPON AVENUE TARPON SPRINGS, FL 34689			TRAN, AMY	
			ART UNIT	PAPER NUMBER
			2157	

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/970,395		NISHIKAWA, HIDEKI	
	Examiner		Art Unit	
	Amy Tran		2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 4 and 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to the application filed on October 03, 2001. Claims 1-5 are pending examination. Claims 1-5 represent a music data distribution mail magazine issuing system.

Objections

2. The application 's disclosure is objected to because of the following informalities: inconsistent terminology. The server 10 must be referred to as either overall management server or total management server. Appropriate correction is required.

3. Claims 4 and 5 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend on a multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 4 and 5 have not been further treated on the merits.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claim 2 recites the limitation "said data" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 1-5 are rejected under 35 U.S.C. 102(e) as being unpatentable over Wiser et al. (hereinafter "Wiser"), US Patent 6,385,596.

As to claim 1, Wiser teaches a music data distribution, mail magazine issuing system, that permits users to access and to display, listen to and/or download registered data designated by said users, comprising:

a music data server, for uploading and registering music data held by registration applicants (column 11 lines 32- 38) and for distributing said music data on line upon receiving requests from users (column 9 lines 54-67);

a mail magazine server, for registering correlated character data and/or image data associated with said registration applicants, and/or music data and for, as needed, a delivery server for distributing on line said character data and/or said image data together with information provided from said music data distribution, mail magazine issuing system (column 6 lines 59-64);

a total management server, for managing and controlling the entire system, that includes a function for examining the copyrights of data registered at said servers or, when problems arise related to public order and morals and other associated problems, for determining legal registration appropriateness and for selecting and registering only legally appropriate data (column 10 line 60 – column 11 line 7, wherein a computer system called a distribution hub is read as a total management server).

As to claim 2, Wiser teaches an information distribution form used by said mail magazine server is a mail magazine issued for said registration applicants, and said data is character data, including songs associated with data registered in said music data server, registerer profiles, self-advertisements, registerer messages to music data users, and live concert information (column 6 lines 59-64).

As to claim 3, Wiser teaches a function, based on said registration data for said music data user, for automatically transmitting information for a succeeding issue date and the opening date for a live concert (column 6 line 59-column 7 line 3, text and commercial value data are transmitted to users to view).

As to claim 4, Wiser teaches a music data gift function for receiving the name of a musical piece selected by a user who is a member of said system, an instruction for predetermined entries and a fee paid by said user, and for permitting a third party

Art Unit: 2157

designated by said user to listen to and/or download music data (column 8 lines 18-41, wherein the voucher is read as a music data gift).

As to claim 5, Wiser teaches a music data gift function for enabling the on-line transmission, to a third party designated by said user, of associated character data and/or image data that accompany said music data (column 8 lines 18-41, wherein the voucher is read as a music data gift).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

1. Hunter et al., US Patent No. 6,647,417 discloses music distribution system.
2. Leeke et al., US Patent No. 6,587,127 discloses content player method and server with user profile.
3. Sachs, US Patent No. 6,240,397 discloses method for transferring, receiving and utilizing electronic gift certificates.

Contact Information

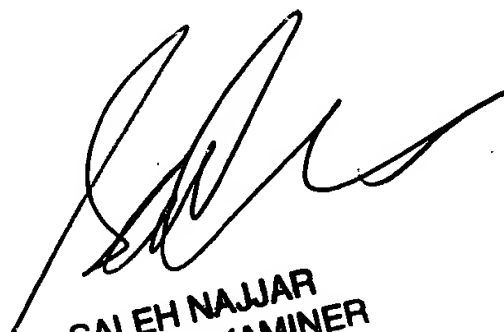
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy Tran whose telephone number is (571) 272-4243. The examiner can normally be reached on M-F from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

at

December 6, 2004



SALEH NAJJAR
PRIMARY EXAMINER